IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE R.BASANT

THURSDAY, THE 20TH SEPTEMBER 2007 / 29TH BHADRA 1929

Crl.MC.No. 2920 of 2007()

CC.1148/2000 of CHIEF JUDL.MAGISTRATE, ERNAKULAM

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PETITIONER: ACCUSED

REMADEVI,D/O. SANKUNNY,
RAM NIVAS, KUTHAITHODU PO, CHERTHALA.

BY ADV. SRI.P.N.MOHANAN

RESPONDENTS: COMPLAINANT

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1. STATE OF KERALA REP. BY
PUBLIC PROSECUTOR,HIGH COURT OF KERALA
ERNAKULAM.

2. G.MANI,GLAT NO.54,
KUDUMBI COLONY, H.NO. 37/834,ELAMKULAM.

R1 BY PUBLIC PROSECUTOR SRI. GIKKU JACOB

THIS CRIMINAL MISC. CASE HAVING COME UP FOR ADMISSION ON 20/09/2007, THE COURT ON THE SAME DAY PASSED THE FOLLOWING:

R. BASANT, J.

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Crl.M.C.No. 2920 of 2007

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Dated this the 20th day of September, 2007

O R D E R

The petitioner faces indictment in a prosecution under Section 138 of the N.I. Act. Proceedings were initiated as early as in 2000. The petitioner had entered appearance and was enlarged on bail. Consequent to the non-appearance of the petitioner on a specified date, i.e. 16.8.2007, it is submitted, a non-bailable warrant has been issued against the petitioner. The petitioner now finds such warrant of arrest chasing him.

2. According to the petitioner he is absolutely innocent. His failure/omission to appear earlier was not wilful, but was due to reasons beyond his control. He has engaged a counsel to defend himself. He is willing to surrender before the learned Magistrate and seek bail. He shall co-operate with the Court for the expeditious disposal of the case. But he apprehends that his application for bail may not be considered by the learned Magistrate on merits, in accordance with law and expeditiously. In these circumstances it is prayed that appropriate directions may be issued to the learned Magistrate to release the petitioner on bail on the date of surrender itself.

3. It is certainly for the petitioner to appear before the learned Magistrate and explain to the learned Magistrate the circumstances under which he could not earlier appear before the learned Magistrate. I have no reason to assume that the learned Magistrate would not consider the application for bail to be filed by the petitioner when he surrenders before the learned Magistrate, on merits, in accordance with law and expeditiously. Every court must do the same. No special or specific direction appears to be necessary. Sufficient general directions have already been issued by this Court in the decision in **Alice George** v. **Dy.S.P. of Police** (2003 (1) KLT 339).

4. This application is accordingly dismissed. I may however hasten to observe that if the petitioner appears before the learned Magistrate and applies for bail after giving sufficient prior notice to the Prosecutor in charge of the case, the learned Magistrate must proceed to pass orders on merits, in accordance with law and expeditiously - on the date of surrender itself.

5. In the peculiar facts and circumstance of this case, it is directed that the non-bailable warrant issued on 16.8.07 shall not be executed till

1.10.2007. The petitioner shall within that time appear before the learned Magistrate and seek regular bail.

(R. BASANT)
Judge

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